LIBRARY
SUPREME COURT, U.S.

Office - Supreme Court, U. S.
FILED
SEP 30 1953
HAROLD B. WILLEY, Clerk

In the Supreme Court of the United States.

OCTOBER TERM, 1953.

No. 18.

GEORGE EARL TOOLSON,
Petitioner,

v.

NEW YORK YANKEES, INC., ET AL.,
Respondents.

BRIEF FOR BOSTON AMERICAN LEAGUE BASE BALL COMPANY AS AMICUS CURIAE.

THOMAS REED POWELL,
JOHN T. HAYES,
Attorneys for Boston American
League Base Ball Company.

ADDISON C. GETCHELL & SON, LAW PRINTERS, BOSTON.

Subject Index.

I. Summary statement of position and interest 1

II. Argument 3

III. Conclusion 16

Table of Authorities Cited.

Cases.

Apex Hosiery Co. v. Leader, 310 U.S. 469 14

Binderup v. Pathe Exchange, 263 U.S. 291 8

Connecticut Light & Power Co. v. Federal Power Commission, 324 U.S. 515 10

Dahnke-Walker Milling Co. v. Bondurant, 257 U.S. 282 8

Davidson v. New Orleans, 96 U.S. 97 14

Detroit Bridge Co. v. Tax Board, 294 U.S. 83 7

10 East 40th Street Building, Inc., v. Callus, 325 U.S. 578 10

Erie Railroad Co. v. Pennsylvania, 158 U.S. 431 7

Federal Baseball Club v. National League, 259 U.S. 200 1, 9, 13

Federal Trade Commission v. Bunte Brothers, Inc., 312 U.S. 349 10

Fisher's Blend Station, Inc., v. State Tax Commission, 297 U.S. 650 5

Gibbons v. Ogden, 9 Wheat. 1 3

Hammer v. Dagenhart, 247 U.S. 251 11

Holy Trinity Church v. United States, 143 U.S. 457 16

Hooper v. California, 155 U.S. 648 12

Industrial Association of San Francisco v. United States, 268 U.S. 64 9

Kirschbaum Co. v. Walling, 316 U.S. 517 10
Leisy v. Hardin, 135 U.S. 100 7
Lemke v. Farmers Grain Co., 258 U.S. 50 8
Lorain Journal Co. v. United States, 342 U.S. 143 8
Mandeville Farms v. Sugar Co., 334 U.S. 219 7, 9
Moore v. New York Cotton Exchange, 270 U.S. 593 4
Mulford v. Smith, 307 U.S. 38 10
Puget Sound Co. v. State Tax Commission, 302 U.S. 90 6
Standard Oil Co. v. United States, 221 U.S. 1 13
Swift & Co. v. United States, 196 U.S. 375 7, 11
United States v. Darby, 312 U.S. 100 11
United States v. Frankfort Distilleries, 324 U.S. 293 8, 9
United States v. Kirby, 7 Wall. 482 16
Utah Power & Light Co. v. Pfost, 286 U.S. 165 4
Wickard v. Filburn, 317 U.S. 111 10
Williams v. Fears, 179 U.S. 270 6

STATUTES.

U.S. Constitution, Fourteenth Amendment 14

Anti-Trust Acts, 15 U.S.C. sec. 1 1, 11
Fair Labor Standards Act, 52 Stat. 1060, 29 U.S.C. secs. 201 et seq. (as amended) 10
Federal Employers' Liability Act (1939 amendment), 53 Stat. 1404, 45 U.S.C. sec. 51 10
National Labor Relations Act, as amended by Labor Management Relations Act, 1947, 61 Stat. 136, 29 U.S.C. secs. 141 et seq. 10
Sherman Act, 15 U.S.C. sec. 1 2, 3, 5, 8, 9, 10, 13, 14, 16

REPORTS.

Ministry of Labour and National Service, Report of a Committee of Investigation into a Difference Regarding the Terms and Conditions of Association Football Players (1952) 15

Reach Base Ball Guide, 1916, p. 10 15

Report of the Sub-Committee on Study of Monopoly Power, House of Representatives, Eighty-Second Congress, Second Session, pp. 228, 229 15

In the
Supreme Court of the United States.

OCTOBER TERM, 1953.

No. 18.

GEORGE EARL TOOLSON,
Petitioner,
v.
NEW YORK YANKEES, INC., ET AL.,
Respondents.

BRIEF FOR BOSTON AMERICAN LEAGUE BASE BALL COMPANY AS AMICUS CURIAE.

I.

SUMMARY STATEMENT OF POSITION AND INTEREST.

With consent of the parties, this brief is filed for Boston American League Base Ball Company, as *amicus curiae*, in support of the holding by the Courts below, rendered in conformity with the decision of this Court in *Federal Baseball Club* v. *National League*, 259 U.S. 200, that the baseball enterprise is not engaged in "trade or commerce" within the meaning of the Anti-Trust Acts.

Boston American League Base Ball Company is a member of the American League and operates a baseball club familiarly known as the Boston Red Sox. Its interest in this litigation is patent.

This brief will not deal with all aspects of the case but will confine itself to certain issues arising in this litigation which are similar to those in the two companion cases now before this Court and are deemed to be of importance to baseball as a whole. Therefore, it should be regarded as supplementary to the comprehensive, detailed and closely documented brief of the respondents.

It must be apparent to this Court, as it was to Mr. Justice Holmes and his colleagues more than thirty years ago, that baseball is a unique enterprise. Being a competitive sport, it must be conducted by teams capable of producing exhibitions on approximately equal terms. The undivided allegiance of a player to his team is a paramount consideration affecting the integrity of the game itself which at all times must be assured. A system for the training and development of young players is essential and provision must be made for safeguarding the substantial investment required to make this possible. Hence, there has developed by experience over the years a set of rules and regulations which are designed to accomplish these purposes. The baseball clubs, by subscribing to these rules and regulations, have subordinated their bargaining power, and therefore have agreed to abide by a code of fair competition for players' services in order to preserve and to promote competition in the contests between the competing teams on the playing field.

The question is whether this Court shall overrule or distinguish the earlier baseball case and now hold that these rules and regulations are subject to the prescriptions of the Sherman Act notwithstanding the peculiar and anomalous characteristic of the enterprise of organized baseball and of the injuries to the game and to the public if there were a requirement of unbridled competition.

We agree fully that various elements of the enterprise of organized baseball are subject to the power of Congress

to regulate under its commerce power and the supplementary powers derived from the necessary and proper clause. Therefore, we do not trouble the Court with refutation of the contentions of the petitioner as to the full constitutional scope of the commerce clause. It is enough to point out that they are irrelevant to the issue before us, which is whether the player regulations of organized baseball here complained of have in fact and in law been subjected by Congress to the prescriptions of the Sherman Act.

II.

Argument.

The familiar country storekeeper is as a trader and vendor of course engaged in commerce, commerce in the sense of what Mr. Chief Justice Marshall in *Gibbons* v. *Ogden* called "traffic," meaning trade as distinguished from navigation, thus using "traffic" in a quite different sense from the modern connotation of transportation.

If the storekeeper as vendor is engaged in commerce, so is his vendee as buyer engaged in commerce. So it would seem that, if the exhibitor of a sporting contest or a concert or a theatrical exhibition or the owner of a scene of natural beauty like the Virginia Natural Bridge or the Ausable Chasm is engaged in commerce because he charges a spectator for the privilege of seeing the view or the contest or the concert or the theatrical performance, the spectator as well as the exhibitor must be engaged in commerce. Outside of transportation and its counterparts and cases such as animal migration and communication, it takes two people to engage in commerce. There is no need to argue that the spectator is not engaged in commerce. Hence it would seem equally certain that the exhibitor is not engaged in commerce.

And even if this were doubtful, neither is engaged in interstate commerce. Clearly, the baseball club is not engaged in interstate commerce merely because the spectator carries away across the state line his recollection or memory of what he has seen, any more than is a restaurant proprietor on an interstate highway who serves a meal or sells a sandwich to a motorist on an interstate journey who suspends his travel briefly for consuming or purchasing and carrying away some food.

The lecturer or the preacher or the proprietor of areas of natural beauty may for a consideration license independent enterprisers to transmit their words or their representations of scenery across state lines by radio or television and authorize them for this purpose to view the premises or to hear the spoken words. However, this does not mean that the lecturer or the preacher or the proprietor of such areas of natural beauty any more than the exhibitor of the athletic exhibition thereby engages in interstate commerce.

In the case of the spectator licensed to view the athletic exhibition AND to send across state lines reports of it by telegraph or by radio or representations of it by telecast, the interstate commerce or transmission begins after the exhibitor has afforded the spectacle. Play-by-play the exhibitor is through when the radio announcer or the television operator receives and before he begins to transmit.

The exhibition and the transmission may be as nearly concurrent in time as the generation of electricity and its transmission. But the exhibition like the generation is not commerce and in any event is not interstate commerce. *Utah Power & Light Co.* v. *Pfost*, 286 U.S. 165. Indeed, this is even more clearly so in the case of an athletic exhibition where the transmitter is not the same enterpriser as the creator but rather an independent contractor. See *Moore* v. *New York Cotton Exchange*, 270 U.S. 593, in which

the interstate telegraphic transmission of quotations gathered by a commodity exchange, pursuant to a contract in which the payments by the recipients were shared by the telegraph company and the exchange, was held in an action under the Sherman Act not to transform the activity of the exchange into interstate commerce.

The decision and opinion in *Fisher's Blend Station, Inc.*, v. *State Tax Commission*, 297 U.S. 650, are significantly instructive on the point of the legal insulation of the furnisher of information or the provider of an exhibition from the independently owned and managed communications enterprise which by 20th century mechanical facilities concurrently or subsequently transmits the information or the pictorial representation to recipients whose receiving sets transform the emanations into sounds and sights.

In this *Fisher's Blend* case a broadcasting company successfully sought immunity from a state occupation tax measured by the gross receipts from its sale of radio "time" to advertisers. The state contended that the radio station merely furnished the facilities to its broadcasting customers and therefore was not itself engaged in commerce. This Court unanimously held otherwise, the opinion declaring that "we see no more basis for saying that appellant's customers do the broadcasting than for saying that a patron of a railroad or a telephone company alone conducts the commerce involved in his railroad journey or telephone conversation." 297 U.S. 650, 654. This conclusion was premised on the factual physical assumption that "the broadcasting of radio emanations, as distinguished from the production of the sounds broadcasted, is effected by appellant and not by its customers." *Id.*, 653.

In this radio case there were involved only the radio station and the advertisers who were its customers. Even if it should be thought that the advertisers who were the "patrons" of the radio station were like shippers and thus

in some sense participants in the transmission, this would not help the petitioner here. The action here is not against the advertising sponsors of the baseball exhibitions who are the patrons of the broadcasting and telecasting stations and who pay them for their service. It is against the provider of the exhibition which is confined to the local playing field and which there and nowhere else affords to the reporters of sound and sight the subject matter of their reporting. The transmission which is commerce is therefore conducted not by the baseball club but by the radio station or the television station, and the baseball club does not engage in this interstate commerce to which the stations and the advertising sponsors as their "patrons" are the parties.

To the analogies of the proprietor of areas of natural beauty and those of the lecturer and the preacher, there may be added the case of the university which receives a fee for permitting a licensee to view its Saturday afternoon football games and to transmit descriptions of them across state lines by radio and television. While the performers in such a case may be amateurs, this exhibitor and the baseball exhibitor are in other respects alike in that each is the producer of an athletic contest and for a consideration licenses some observers to see the contest and others not only to see it but also to transmit what they observe. The mere fact that such an exhibitor is compensated for the license cannot convert into commerce what otherwise is not commerce any more than did the existence of such a pecuniary element in the cases sanctioning state taxing power over employment agents who were recompensed for furnishing stevedores to owners of vessels, *Puget Sound Co.* v. *State Tax Commission*, 302 U.S. 90, and for hiring residents of one state to take jobs in another, *Williams* v. *Fears*, 179 U.S. 270. And since the rentals paid by a lessee operating carrier to the landlord railroad are not receipts from

interstate commerce, *Erie Railroad Co. v. Pennsylvania*, 158 U.S. 431, and the proprietor of a toll bridge between this country and Canada is not himself engaged in foreign commerce, *Detroit Bridge Co.* v. *Tax Board*, 294 U.S. 83, then the enterprises affording facilities or preliminaries essential to interstate commerce, whether transportation or transmission, are not for that reason themselves interstate commerce.

The license given by the exhibitor to the observer to view the exhibition is therefore wholly intrastate though it may be contemplated by the terms of the license that the observer concurrently upon receipt of what he has seen will transmit by words or representations, to points within the state of origin and without, descriptions of the exhibition play-by-play.

This established line of demarcation between the ending of local commerce or local activity not commerce at all and the beginning of interstate commerce is not abolished or blurred by cases involving commercial trade restraints which, though arising in the course of intrastate or local activities, were found to have a direct and substantial effect upon interstate commeree itself. *Swift & Co.* v. *United States*, 196 U.S. 375. Nor is any such effect to be attributed to decisions that inhibit the application of state regulatory power in the state of destination or in the state of origin which in effect impinges at a point so close to the beginning or the ending of interstate transportation as to be regarded as substantially an embargo on it or a discrimination against it. See *Leisy* v. *Hardin*, 135 U.S. 100.

An agreement among sugar refiners to pay a uniform price for sugar beets, although the beets are grown within a single state, may result in the control of the sugar market and thereby have a direct impact on interstate commerce in that commodity. *Mandeville Farms* v. *Sugar Co.*, 334

U.S. 219. And an imposition of minimum price regulation putting a floor under which local sales of grain to a country elevator must not be priced can readily, in the competition between supplies from different states, put the supplies from within the state at a discriminatory competitive disadvantage as compared with products from other states when the ultimate market is designed to be and is established to be a processor in another state. *Lemke* v. *Farmers Grain Co.*, 258 U.S. 50. Cf. *Dahnke-Walker Milling Co.* v. *Bondurant*, 257 U.S. 282.

The restraint complained of here does not in any way interfere with interstate transmission by radio, as did the conduct condemned in *Lorain Journal Co.* v. *United States*, 342 U.S. 143. Indeed, by contrast with the endeavor of the defendant in the *Lorain* case, the baseball agreements are for the purpose of preserving competition in the contest between the competing teams, since such competition would greatly diminish if there were not teams sufficiently well matched to preserve interest in the supporters of each club and to secure sufficient attendance to keep the enterprise going.

Neither does the restraint complained of here affect the price of a commodity offered for sale in interstate commerce, as did that condemned in *United States* v. *Frankfort Distilleries*, 324 U.S. 293, or restrain interstate transportation and sale or leasing of a commodity such as the motion picture films in *Binderup* v. *Pathe Exchange*, 263 U.S. 291.

From these decisions and from similar cases in which conduct has been condemned under the Sherman Act, it is plain either that there existed a combination of persons themselves engaged in interstate commerce or that such local conduct as was involved had a direct and substantial effect on interstate commerce itself.

But since, as has been shown, the baseball clubs are not themselves engaged in interstate commerce, the agreements

relating to the services of the players here complained of as constituting a restraint on their employment are agreements affecting only a local enterprise, and cannot be said to affect interstate commerce at all. Surely the aims and purposes of the baseball agreements are as "purely local" as the conduct of the association of employers held not to be within the Sherman Act in *Industrial Association of San Francisco* v. *United States*, 268 U.S. 64, 77; and it is equally plain that these aims are not "motivated by the purpose of restraining commerce," and that the means used to achieve the purpose of the baseball agreements do not "directly touch upon interstate commerce." *United States* v. *Frankfort Distilleries*, 324 U.S. 293, 297. See also *Mandeville Farms* v. *Sugar Co.*, 334 U.S. 219, 234.

There are, of course, many enterprises which, although not themselves engaged in interstate commerce, may nonetheless be regulated by adequately prescribed national regulation. The operation of a mine or of a farm or of a manufacturing plant, for instance, may, in relation to declared Congressional policy, affect interstate commerce with sufficient directness to be subject to a specific regulatory enactment.

Obviously Congress, in view of its failure to convey such a purpose by explicit declaration, did not by the Sherman Act purport to regulate every local enterprise that has any relation to or dependence upon transportation or communication, however slight or incidental such relationship might be.

In contrast with the unbroken acquiescence by Congress in the authoritative adjudication in the *Federal Baseball* case that organized baseball is outside the scope of the Sherman Act are the familiar more recent Congressional enactments invoking broader conceptions of national power in the regulation of subjects and relationships outside of commerce or outside of interstate commerce.

Thus in the National Labor Relations Act, as amended by the Labor Management Relations Act, 1947,[1] the Fair Labor Standards Act[2] and the 1939 Amendment broadening the coverage of the Federal Employers' Liability Act,[3] Congress has dealt specifically and distinctly with local intrastate conduct and activities which, though not intrinsically commerce or interstate commerce, have a sufficiently close relationship to interstate commerce and the national economy to be of national concern and therefore subject to the exercise of national power by adequately inclusive declarations.

By no similar legislation has Congress sought to expand the scope of the Sherman Act to make it applicable to organized baseball.

The varying statutes of Congress clearly recognize the distinction between the constitutional presence or scope of Federal power and the exercise of such power by any given Congressional action. This is illustrated not only by Acts of Congress regulating or establishing competitive business practices, crop restriction and liability for personal injuries, but by legislation in the broader area of labor relations as well. See *Federal Trade Commission* v. *Bunte Brothers, Inc.*, 312 U.S. 349; *10 East 40th Street Building, Inc.*, v. *Callus*, 325 U.S. 578; *Kirschbaum Co.* v. *Walling*, 316 U.S. 517, 520-522; *Connecticut Light & Power Co.* v. *Federal Power Commission*, 324 U.S. 515; *Mulford* v. *Smith*, 307 U.S. 38; *Wickard* v. *Filburn*, 317 U.S. 111.

To the contention that the clubs composing the Leagues are located in different states throughout the country and must cross state lines to fulfill their scheduled exhibitions, we have no inclination to do other than to refer to Mr. Justice Holmes' disposition of a similar contention in the

---

[1] 61 Stat. 136, 29 U.S.C. §§141 *et seq.*

[2] 52 Stat. 1060, 29 U.S.C. §§201 *et seq.* (as amended).

[3] 53 Stat. 1404, 45 U.S.C. §51.

earlier baseball case and to point out that this element of transportation is merely incidental to the enterprise. It is not lightly to be assumed by the petitioner that the Justice of this Court who by his dissent in *Hammer* v. *Dagenhart*, 247 U.S. 251, anticipated current criteria for determining the scope of Federal power under the commerce clause, *United States* v. *Darby*, 312 U.S. 100, and whose opinions interpreting the Sherman Act established principles constituting a major turning point in the interpretation of that Act (*e.g.*, *Swift & Co.* v. *United States*, 196 U.S. 375) did not by modern standards appraise correctly this element of transportation which is now being re-asserted as a basis for the contention that organized baseball is engaged in interstate commerce within the meaning of the Anti-Trust Acts.

And it would seem that the invoked analogies of a firm of lawyers sending out a member to argue a case and the Chautaqua lecture bureau sending out lecturers are as imperatively sound today as ever.

There is also brought to mind the analogy of the innkeeper who licenses guests to occupy his rooms and who serves them food and drink. There can be no doubt that his is a purely local business. And this is true whether he operates one hotel in a single state or a group of many in several states. A substantial number of the persons accommodated by members of such a group of hotels cross state lines and use interstate communication facilities such as the telegraph and the telephone to make their reservations, as well as interstate transportation facilities to reach their destination. It is common knowledge that these hotels themselves maintain inter-connecting teletype facilities to transmit information relating to their operations and also as a convenience to their guests in various states who desire to make advance arrangements to go from one hotel in the group to another. Such a group of hotels advertises

in newspapers, periodicals, interstate carriers, and other national media. In the performance of their duties, executives, purchasing agents, dieticians and other personnel travel from state to state to perform necessary services. Space may be set aside where telegrams can be dispatched and railroad and airplane tickets purchased or reserved. Radio broadcasts and telecasts of performances by musicians and others provided by the hotels for the entertainment of their guests frequently are transmitted across state lines. While it must be conceded that these incidents of interstate transportation and communication attend the business of the innkeeper, they do not make the business itself interstate commerce.

Though it is true that in addition to the analogies of the law firm and the lecture bureau Mr. Justice Holmes cited *Hooper* v. *California*, 155 U.S. 648, which dealt with insurance, he did so only as illustrative of the legal proposition that interstate activities incidental to engaging in a purely local activity do not convert the latter into an interstate transaction. The *Hooper* case was not cited for the purpose of showing any other analogy between insurance and baseball. Its citation plainly does not mean that the constitutional and legislative status of such athletic exhibitions is so dictated by the constitutional or legislative status of insurance that the former must follow any alteration of the latter. There may be resemblances in some respects between two types of activity without the concomitant of absolute identity in all respects.

Obviously the differences between a license to view an exhibition and a policy of insurance are far reaching. Insurance involves a continuing financial and contractual relationship between a promisor and a promisee. It involves a financial liability, absolute or contingent. The liability may run to others than the promisee. In the normal case there may be a change of promisees. The

coverage of insurance is an asset of advantage in the securing of financial credit. The coverage is represented by a formal document. It gives security against financial loss from fire and other casualties in the course of interstate transportation of commodities. The coverage of insurance, being a practical necessity, is an item reflected in the price of goods transported across state lines.

The obvious and striking contrast between the permeating functions of the insurance business in relation to the national economy and the absence of such a relationship in the baseball enterprise needs no elaboration.

From Chief Justice Marshall until recent years, the opinions of various Supreme Court Justices have contained language in broad inclusive terms which would leave little if anything outside the orbit of the terms "commerce" and "commerce among the several states." Many of these broad formulations were familiar when the Supreme Court decided the *Federal Baseball* case and other cases excluding from the conceptions of commerce and interstate commerce various activities having some relation to or dependence upon transportation.

Thus contemporaneously with these expansive judicial formulations were the familiar Supreme Court decisions drawing practical distinctions and differentiations between what is and what is not within the constitutional and legislative conceptions. Not a few of the decisions restricting the possible amplitude of the words "commerce," "interstate commerce," "restraint" and "monopolize" would have been impossible had the broad phrases now invoked on behalf of the petitioner been applied to the full extent of their possible literary scope. Not from dictionary definitions or literary exegesis of the words and phrases in the Sherman Act came the "rule of reason" or the judgment that the restraint therein condemned was confined to restraint of "commercial competition." *Standard Oil Co.* v.

United States, 221 U.S. 1. *Apex Hosiery Co.* v. *Leader*, 310 U.S. 469. Considerations of practicality, of public policy, of recognition of special and peculiar characteristics of varying types of conduct and enterprise must inevitably play a part in statutory interpretations. Thus we must derive our applications of the decisions interpreting the Sherman Act from the decisions themselves and not from expansive language in the opinions.

"General propositions," said Mr. Justice Holmes, "do not decide concrete cases." And in *Davidson* v. *New Orleans*, 96 U.S. 97, 104, Mr. Justice Miller, in declining to give a definition of the phrase "due process of law" in the then recently enacted Fourteenth Amendment, said:

> "But, apart from the imminent risk of a failure to give any definition which would be at once perspicuous, comprehensive, and satisfactory, there is wisdom, we think, in the ascertaining of the intent and application of such an important phrase in the Federal Constitution, by the gradual process of judicial inclusion and exclusion, as the cases presented for decision shall require, with the reasoning on which such decisions may be founded. This court is, after an experience of nearly a century, still engaged in defining the obligation of contracts, the regulation of commerce, and other powers conferred on the Federal government, or limitations imposed upon the States."

No realistic appraisal can fail to disclose that unbridled competition as applied to baseball would not be in the public interest. The element that must predominate in the game is competition on the playing field and not in the market place. Actual experience has shown that this is so, for on earlier occasions the Leagues have for brief periods indulged in unrestricted competition. This did not improve

conditions, but instead had the opposite effect and produced what was described at the time as "disgusting revelations of the seamy side of base ball through the contract-juggling tactics of magnates and players, their wrangles in court and press, and their apparent determination to defeat each other regardless of the cost to the game — a pitiless exposition of the commercialism of professional base ball which has driven hundreds of thousands of patrons away from the game and to other sports, all of which are now flourishing as never before, while the greatest sport of all, base ball, is languishing." *Reach Base Ball Guide*, 1916, p. 10.

In England the experience with professional football has been similar. Prior to the formation of the football Leagues "poaching" by one club of another club's players had become a common practice, and so as early as 1888 agreements regulating competition for players' services were deemed essential. These agreements are still in effect today. See *Ministry of Labour and National Service, Report of a Committee of Investigation into a Difference Regarding the Terms and Conditions of Association Football Players (1952)*. Thus it is fully recognized by this Committee that professional football in England like baseball here is a unique enterprise whose objectives cannot be attained under a system of unrestricted competition.

It is significant also to note that the Celler Committee, after giving prolonged consideration to the problem of possible Congressional control of various features of organized baseball, concluded that baseball is "a unique industry" and that it "could not operate successfully" without some form of agreement regulating competition for players' services. *Report of the Sub-Committee On Study of Monopoly Power*, House of Representatives, Eighty-Second Congress, Second Session, pp. 228, 229.

This unique and anomalous characteristic of the baseball enterprise is therefore in itself a reason for not applying to the full extent of their possible literary scope the broad general phrases invoked by the petitioner in support of his contention that a precedent more than thirty years old should now be overruled. *Holy Trinity Church* v. *United States*, 143 U.S. 457. *United States* v. *Kirby*, 7 Wall. 482. This is especially the way of wisdom since Congress, fully aware of the decision in the earlier baseball case for all these years, has itself failed to modify the situation so long left free from the prescriptions of the Sherman Act.

III.

Conclusion.

For the foregoing reasons the decisions of the Courts below should be affirmed.

Respectfully submitted,

THOMAS REED POWELL,

JOHN T. HAYES,

Attorneys for Boston American League Base Ball Company.

Boston, Massachusetts,

September 28, 1953.